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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,019	12/16/2003	Charles M. Mettler	PSSIP0115US	5594

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EXAMINER

STERLING, AMY JO

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/737,019

Applicant(s)

METTLER ET AL.

Examiner

Amy J. Sterling

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-20 and 22-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-17 and 22-36 is/are rejected.
- 7) ☒ Claim(s) 18-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is the second non-final Office Action for application number 10/370,019 Base Support for Post or Other Upright, filed on 12/16/03. Claims 1-9, 11-20, 22-36 are pending. This non-final Office Action is in response to applicant's reply dated 1/24/05. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

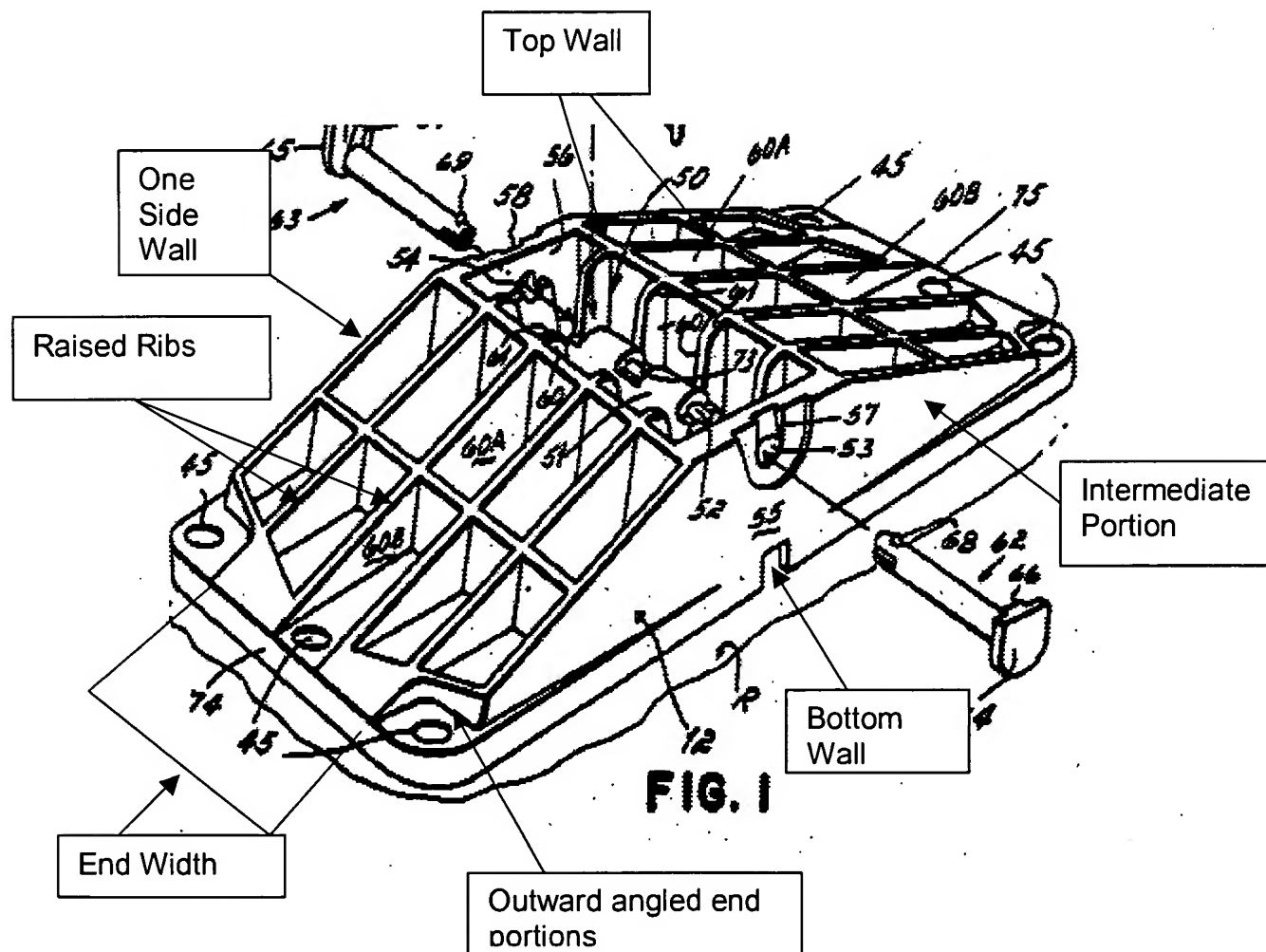
Claim Rejections - 35 USC § 102

Claims 1-3, 5-7, 15 and 22-28 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4596489 to Mariol et al.

The patent to Mariol et al. teaches a molded plastic base support (See Col. 4 lines 39-45 and Col. 5, line 53, for material) for supporting an elongated member in a substantially upright position having a base member (10) having a greater length than width and spaced apart bottom and top walls and opposite side walls (55), one of the side walls being substantially straight and in substantially the same plane throughout its length, and the other of the side walls having an intermediate length that is spaced further from the plane of the one side wall than end lengths of the other side wall to provide the base member with a wider intermediate width than end widths, and a non-circular cross-sectional shaped mounting hole (50) extending through the top wall in the wider intermediate width, the mounting hole having a width greater than the end widths and less than the intermediate width of the base member, wherein the end walls are in substantial alignment with each other in a parallel spaced relation from the one side wall

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and the mounting hole has a center that extends in a direction substantially perpendicular to the top wall and is substantially in the same plane as the end lengths of the other sides wall. There is a horizontal plane that passes through the mounting hole center and through all the end lengths. Mariol et al. also discloses wherein the intermediate length of the other side wall has outwardly angled end portions extending toward each other and an intermediate portion extending between the end portions in parallel spaced relation to one side wall.



Mariol et al. also discloses wherein the mounting hole has a plurality of laterally spaced longitudinally extending ribs (60) around the entire periphery of the mounting hole that are axially transversely rounded and wherein the top wall has a plurality of axially spaced apart stacking ribs (See Drawing Above) and the bottom wall has corresponding recesses (89, 90) for receipt of the stacking ribs.

Claim Rejections - 35 USC § 103

Claims 4 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. as applied to claim 1 above and in view of United states Patent No. 4275535 to Stalzer.

Mariol et al. teaches the basic inventive concept as shown above with the exception that it does not teach wherein the mounting hole extends completely through the base member.

Stalzer shows a base member (1) for supporting an elongated member having a hole (3) which extend completely through the base, used in order to be able to extend the elongated member into the ground, if so desired. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Stalzer to have had the hole extend completely through the base member, in order to be able to extend the elongated support into the ground.

Claims 8, 9, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. as applied to claim 1 above and in view of United states Patent No. 5356108 to Stagl et al.

Mariol et al. teaches the basic inventive concept as shown above and including that the top wall of the base member has angled surfaces that slope outwardly toward the bottom wall adjacent opposite ends of the base member. Mariol et al. does not teach wherein the base member is substantially hollow and has a fill hole adjacent one end.

Stagl et al. teaches a weighted base, (12), for holding post (16) wherein the base is substantially hollow and has a fill hole (48) adjacent to one end for filling the base member with flowable ballast material (66), used to weight the base (12) and post (16) won't tip over. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Stagl et al. to have made the device hollow with a fill hole in order to weight the base, so that it will not tip over.

Claims 11, 14, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. and in view of United states Patent No. 5356108 to Stagl et al. as applied to claims 1 and 8 above and further in view of United States Patent No. 6659681 to Kulp et al.

Mariol et al. and Stagl et al. teach the basic inventive concept including wherein Mariol et all. teaches wherein the base member has thinned out non-hollow solid end portions and wherein the top wall of the ends portions has raised ribs (See Drawing

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Above) to provide increased strength at the end portions. Mariol et al. and Stagl et al. do not teach wherein anti-skid pads are attached to the bottom wall end portions.

Kulp et al. teaches a weighted base (314), which has anti-skid pads (386) which are attached to the bottom wall end portions of the base (314), used in order to keep the device from unintentional moving. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Mariol et al. and Stagl et al. to have added anti-skid pads, in order to keep the device from moving unintentionally.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. and in view of United states Patent No. 5356108 to Stagl et al. and in view of United States Patent No. 6659681 to Kulp et al. as applied to claims 1, 8 and 11 above and further in view of United States Patent Publication No. 2004/0025899 to Pinsky.

Mariol et al., Stagl et al. and Kulp et al. teach the basic inventive concept with the exception that they do not teach wherein the bottom wall has recesses at the end portions in which the anti-skid pads are received.

Pinsky shows a base which has anti-skid pads (309) which are located in recesses (See Fig. 5) in order to be able to easily locate the pads during mounting. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Pinsky to have had recesses in the base in order to easily place the pads while mounting the pads.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. and in view of United states Patent No. 5356108 to Stagl et al. and in view of United States Patent No. 6659681 to Kulp et al. as applied to claims 1, 8 and 11 above and further in view of United States Patent 5467977 to Beck.

Mariol et al., Stagl et al. and Kulp et al. teach the basic inventive concept with the exception that they do not teach wherein the anti-skid pads are stapled to the bottom wall at the end portions.

Beck teaches a base, which has end wall portions (4, 7) which has anti-skid pads attached to the device at the end portions with staples (17), the staples used to firmly secure the pads to the device. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Beck to have stapled the anti-skid pads to the ends of the wall portions in order to firmly adhere the pads to the desired device.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. as applied to claim 1 above and in view of United states Patent No. 5377976 to Matherne et al.

Mariol et al. teaches the basic inventive concept with the exception that it does not teach a carrying handle on an exterior side wall of the base member.

Matherne et al. teaches a base member with a side wall (18) that has a carrying handle on an exterior of the side wall, used to aid in moving the device to a desired location. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Matherne et al. to have added an exterior handle in order to help in moving the base member.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4596489 to Mariol et al. and in view of United states Patent No. 4275535 to Stalzer as applied to claim 29 above and further in view of United states Patent No. 5356108 to Stagl et al.

Mariol et al. and Stalzer teach the basic inventive concept including wherein the base member has solid opposite end portions that are substantially thinner than an intermediate length of the base member, wall of the base member has angled surfaces that slope outwardly toward the bottom wall adjacent opposite ends of the base member. They do not teach wherein the base member is substantially hollow and has a fill hole adjacent one end.

Stagl et al. teaches a weighted base, (12), for holding post (16) wherein the base is substantially hollow and has a fill hole (48) adjacent to one end for filling the base member with flowable ballast material (66), used to weight the base (12) and post (16) won't tip over. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention from the teachings of Stagl et al. to have made the device hollow with a fill hole in order to weight the base, so that it will not tip over.

Response to Arguments

The applicant has argued that the reference to Mariol et al. does not teach a base support which has substantially straight and in substantially the same plane throughout its length and the other has an intermediate length spaced further from the plane of to one side wall than end lengths of the other side wall. This is unpersuasive as shown by the marked drawing above.

The applicant has also argued that the ribs are only provided on two sides and therefore are not laterally spaced around the entire periphery of the mounting hole. This is unpersuasive in that the claim does not limit how near or far the ribs are spaced in order to be considered around on the entire periphery. The ribs are considered to encompass the entire periphery, even though the spacing is different from the spacing as taught by the present application.

The applicant has also argued that the Mariol et al. does not teach a handle. This is unpersuasive in that in a broad interpretation, any device that is capable of being used as a handle suffices to meet the limitation.

Allowable Subject Matter

Claim 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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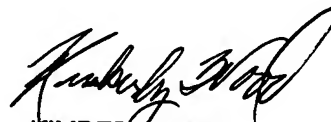
The reason is that the prior art does not teach wherein the carrying handle extends axially from the exterior of one end portion of the intermediate length of the of the other side wall and along an exterior portion of one of the end length of the other side wall.

Conclusion

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 571-272-6815. The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 571-273-6823 (informal amendments and communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.



AJS
Amy J. Sterling
5/26/05



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